No. _____

Supreme Court U.S.
FILED
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IN THE

Supreme Court of the United States

IN RE CHERYL R. RICHARDSON,

Petitioner(s)

v.

SAFEWAY, INC.,

Respondent(s)

On Petition For Writ of Certiorari
Colorado District Court
United States Court of Appeals for the Tenth Circuit

CHERYL R. RICHARDSON
515 SHADY CREST CIRCLE
COLORADO SPRINGS, CO 80916
(719) 210-3605 OR 210-3514

Questions Presented

1. Whether the United States Court of Appeals for the Tenth Circuit failed to answer petitioner's question on when a case closed under Rules of Civil Procedure 60B(1), (2), (3), and (6). When is time up to file under this Rule, United States District Court, United States Court of Appeals, or Supreme Court of the United States? Did courts make an error or violate the petitioner's rights under the United States Constitution?

2. Whether at what time such court's use of Rule 60(a) under Rules of Civil Procedure or when the time is up on Rule 60(a) of Civil Procedure to be used by the courts or the petitioner?

I. Statement of Jurisdiction

The U.S. Supreme Court has jurisdiction under 28 U.S.C.S. § 1651(a), which authorizes federal courts to issue all writs necessary or appropriate in aid of their jurisdiction and agreeable to the usages and principles of law. The power of federal courts extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice. The U.S. Supreme Court is authorized to issue an extraordinary writ (Writ of Prohibition) under 25 U.S.C. § 1651(1). In Re Cheryl R. Richardson is seeking a writ of prohibition, which would be in aid of jurisdiction.

II. Constitutional and Statutory Provisions Involved

The petitioner filed complaint that United States Court of Appeals for the Tenth Circuit whether courts violated Federal R. Civ. P. 60(b)(1), (2), (3), and (5), when the courts failed to answer petitioner's question when a case is closed under Fed. R. Civ. P. 60(b)(1), (2), (3), and (5) or when such courts use Fed. R. Civ. P. 60(a).

III. Statement of the Case

The petitioner appeals from the District Court's order denying her Rule (6) motion. The petitioner is asking relief under Rule 60(b) based on the "court's mistakes, inadvertence, neglect, evidence of fraud, quotation omitting petitioner's argument, etc.

IV. Reasons for Granting the Petition

The Petition for Writ of Certiorari should be granted under an extraordinary writ (28 U.S.C. § 1651(a)) on the fact that United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Colorado did fail to answer the petitioner's question on Rule Fed. R. Civ. P. 60(a), (b)(1), (2), (3), and (5). The court should grand a Writ of Prohibition. A writ would be

appropriate in aiding the court in jurisdiction and be agreeable to the usages and principles of law. No distinction is to be made between orders in aid of a court's own duties and jurisdiction and orders designed to better enable a party to effectuate its rights and duties. It would be the duty of the U.S. Supreme Court to grant a Writ of Certiorari under extraordinary writ or Writ of Prohibition. This would be in aid of jurisdiction from pro se and low courts.

V. Conclusion

The Petition for a Writ of Certiorari should be granted as matter of law.

I, Cheryl R. Richardson, certify that the Writ of Certiorari is presented in good faith and not for delay.

Submitted by

Cheryl R. Richardson

March 4, 2007

A related case No. 04-7194

Certificate of Service

I certify that on March 4, 2007, a true and correct hard copy of the foregoing Petition for Writ of Certiorari was mailed by United States mail, postage prepaid, and addressed to:

Gregory A. Eurich
Holland & Hart, LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CHERYL R. RICHARDSON,
Petitioner-Appellant,

v.

SAFEWAY, INC.,
Respondent-Appellee.

No. 06-1207

ORDER
Filed December 5, 2006

Before **MURPHY**, **SEYMOUR**, and **McCONNELL**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court
ELISABETH A. SHUMAKER,
Clerk

by:
Deputy Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

CHERYL R. RICHARDSON, Petitioner-Appellant,	No. 06-1207
v.	District of Colorado
SAFEWAY, INC., Respondent-Appellee.	(D.C. No. 01-CV-2438-MSK-OES)

ORDER AND JUDGMENT*

Before **MURPHY, SEYMOUR,** and **McCONNELL,** Circuit Judges.

Cheryl Richardson appeals from the district court's denial of her *pro se* Motion To Review This Case Under

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

> "Rule 60(b)(1) motions premised upon mistake are intended to provide relief to a party in only two instances: (1) when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority; or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order."

Rule 60(b). We review the district court's denial of the Rule 60(b) motion for abuse of discretion. *Searles v. Dechant*, 393 F.3d 1126, 1131 (10th Cir. 2004), "'Given the lower court's discretion, the district court's ruling is only reviewed to determine if a definite, clear, or unmistakable error occurred below.'" *Zurich N. Am. v. Matrix Serv., Inc.*, 426 *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999). Even if the alleged clerical errors were made, they are not sufficient to warrant relief from the original judgment in this case.

The district court did not abuse its discretion in finding Ms. Richardson's Rule 60(b) motion to be unsupported by facts and untimely. Further, the district court did not violate her constitutional rights by dismissing the case.

We also **DENY** Ms. Richardson's motion to proceed *in forma pauperis* on appeal, and the appeal is **DISMISSED**.

Entered for the Court,

Michael W. McConnell
Circuit Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Case No. 01-cv-02438-MSK

CHERYL R. RICHARDSON,
Plaintiff,

v.

SAFEWAY, INC.,
Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION

THIS MATTER comes before the Court pursuant to the Plaintiff's *pro se* Motion To Review This Case Under Rule 60(B) **(# 70)**, which the Court treats as a motion for reconsideration.

On September 12, 2003, the Court dismissed **(# 62)** this case with prejudice as a sanction against the Plaintiff for discovery abuses and violation of the Court's orders. The 10th Circuit, affirmed **(# 68)** the dismissal on September 29, 2004. On January 10, 2005, the Supreme Court denied the Plaintiff's petition for certiorari, *Richardson v. Safeway, Inc.*, 543 U.S. 1070 (2005) (mem), and on April 18, 2005, denied the Plaintiff's petition for rehearing, 125 S.Ct. 1832 (mem).

The Plaintiff filed the instant motion asking the Court to "review this case based on the fact of the defendant's and court's mistakes, inadvertence, neglect, newly discovered evidence, fraud, etc." Although the Court

liberally reads the Plaintiff's *pro se* motion, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991), the motion cites no facts whatsoever explaining why relief under Fed. R. Civ. P. 60(b) should be granted. Moreover, the specific grounds listed by the Plaintiff arise under Fed. R. Civ. P. 60(b)(1)-(3), all of which require that the motion to reconsider be filed within one year of the judgment to be reconsidered. Fed. R. Civ. P. 60(b). Here, the order dismissing the Plaintiff's case was entered in 2003, more than 2½ years ago, and thus, Rule 60(b) prevents the Court from granting any relief on the grounds asserted by the Plaintiff. Finally, to the extent that the Plaintiff's motion is premised on the argument that misconduct by the Defendant vitiates or mitigates the Plaintiff's own sanctionable conduct, the 10th Circuit has expressly rejected this argument. *See Richardson v. Safeway, Inc.*, 109 Fed.Appx. 275, 279 (10th Cir. 2004) (unpublished) ("we will not consider plaintiff's conclusory assertions to the effect that Safeway also failed to comply with its obligations under the discovery rules, because Safeway's conduct is not at issue in this appeal").

Accordingly, the Plaintiff's Motion for Reconsideration **(# 70)** is **DENIED**.

Dated this 4th day of April, 2006

BY THE COURT:

Marcia S. Krieger
United States District Judge